IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

MFA.No. 1097 of 2002(B)

O.P(MV).NO.71/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL.
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APPELLANT/CLAIMANT:

T.SUNDARA RAJAN @ SUNDARAN
S/O. THAPASSI CHETTIYAR, PANAGATTUKONAM VEEDU,
AYANAVANCHERRY P.O., ATTINGAL,
THIRUVANANTHAPURAM.

BY ADV. SRI.NAGARAJ NARAYANAN,
SRI.NAIR AJAY KRISHNAN,
SRI.RAJAN VELLOTH,
SRI.SAIJO HASSAN.

RESPONDENTS/RESPONDENTS:
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1. **THE MANAGER, TRANSWORLD CREDIT AND INVESTMENT CO.PVT.LTD., BEACH ROAD, KOLLAM.**
2. **M/S.NEW INDIA ASSURANCE CO.LTD., DIVISIONAL OFFICE, KOTTARATHIL BUILDING ANNEXE, PALAYAM, THIRUVANANTHAPURAM-23.**
3. **MR.BOSE, BOSE AUTO SERVICE, PONKUNNAM.**

BY ADV. SRI.M.NARENDRA KUMAR,
SRI.P.B.SURESH KUMAR,
SRI.N.S.MOHAMMED USMAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1097 of 2002

Dated this the 13th day of September, 2007

Judgment

Koshy,J.

Appellant while walking along the national highway sustained serious injuries when he was knocked down by a car bearing registration No.KET 6901. He suffered very serious injuries. The tribunal found that the accident occurred due to the negligence of the driver of the above vehicle and first respondent being the registered owner is liable to pay compensation. Compensation assessed was Rs.48,000/- with interest at the rate of 12% per annum from the date of application till its deposit. There was no insurance coverage for the vehicle at the time of accident. First respondent was originally declared ex parte. Thereafter, when the award was passed, he approached this court and this Court remanded the case accepting the contention that he was declared ex parte because his advocate did not inform the postings correctly. Thereafter, the matter was re-adjudicated. It is the case of the first respondent that it is a financial company. The above vehicle was sold by

it before the date of accident even though on the date of accident also registered owner's name stood in the company's name. According to it, it was sold to one T. Bose. Accordingly, that T. Bose was made as the third respondent. Third respondent denied that he was in possession of the vehicle at the time of the accident. He also stated that contention of the first respondent that third respondent purchased the vehicle in auction itself is false. The sale register produced to show that it was sold to third respondent was also fabricated. The signature of third respondent was wrongly given. We are not going into that question in this appeal. In any event, the registered owner of the vehicle was the first respondent at the time of accident is not disputed as registered ownership was not transferred in the name of third respondent. Even though police registered FIR on the basis of statements of occurrence witnesses that the offending vehicle involved was Maruti car bearing registration No.KET 6901, police filed refer report (Ext.A3) stating that they are not able to trace out the car as well as the driver and they want further time. Ext.A3 shows that police found on investigation that the offending vehicle is Maruti car bearing registration

No.KET 6901. The only defect is that the above car was not found out or it was missing. However, the tribunal was of the view that since the injuries were serious, the claimant would have been unconscious and he is not seen the car and only a third party has given the car number. It is true that an independent person who witnessed the accident had given the first information statement on the basis of which FIR was registered. Police also conducted further investigation and convinced themselves that the above car was involved. However, it was not traced out. That will not show that the above car was not involved in the accident. So, that part of the finding of the tribunal that the above car was not involved in the accident is not based on any evidence and we set aside the same. RW1 who is an employee of the first respondent is an interested witness.

2. Then the question is who is liable to pay the compensation. It is true that even though transfer of registration will not affect the validity of non-transfer of registration, it will not affect the validity of sale and car, being a moveable property, transfer is followed immediately on delivery after payment of consideration. The registered owner will continue to be

liable. In this connection, we refer to the decision of Apex Court in Dr.T.V.Jose v. Chacko P.M. @ Thankachan and others (AIR 2001 SC 3939). We are of the opinion that since the first respondent was admittedly the registered owner of the vehicle at the time of accident, first respondent cannot shirk its liability to deposit the compensation. This will not prevent the first respondent to take proceedings against such person who was in possession of the vehicle at the time of accident if he has actually sold the vehicle. But, in this case, as far as the liability to third party is concerned, first respondent cannot shirt its liability and he has to deposit the amount as awarded. Total amount awarded was only Rs.48,000/- with 12% interest. Even though it was contended that considering the nature of injuries, more compensation ought to have been granted we are of the opinion that the matter mainly ownership with regard to the liability of registered owner of the vehicle.

3. We also note that the tribunal has awarded 12% interest in 1994. The petition was filed in 1995. Considering the time lag and the present rate of interest, we reduce the interest from 12% to 9%. First respondent shall deposit Rs.48,000/- with 9% interest

from the date of application till its deposit after adjusting the amount already deposited.

The appeal is allowed.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. 1097 OF 2002

Judgment

Dated:13th September, 2007